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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 129

COMPTROLLER OF THE TREASURY OF THE STATE OF MARYLAND,

Petitioner,

v.

THE GLENN L. MARTIN COMPANY
(NOW KNOWN AS THE MARTIN COMPANY)

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Prior to January 28, 1957, the Maryland sales tax statute, as construed by Maryland's highest court,* did not impose a tax on transactions such as those involved in the present case. On that date the Maryland legislature enacted Chap-

Comptroller of Treasury v. Aerial Products, Inc., 210 Md. 627, 124 A. 2d 805 (1956); *Baltimore Foundry & Machinery Corporation v. Comptroller*, 211 Md. 316, 127 A. 2d 368 (1956).

ter 3 of the Acts of 1957 which undertook to make these transactions taxable. Not content with taxing sales made subsequent to the effective date of the statute, the Act purported to tax all such transactions which had previously been made since July 1, 1947.

As applied in this case, the Act, if valid, would in 1957 have imposed a sales tax on transactions which had been completely consummated during the period from March 1, 1951 through April 30, 1954.

On the basis of the foregoing, the Maryland Court of Appeals in this case—

(1) reaffirmed its earlier decisions that, purely as a matter of statutory construction, transactions such as the present were not taxable under the original statute; and

(2) held that Chapter 3 of the Acts of 1957 "seeks to place a tax where none was imposed before and to reach transactions completed long before its enactment" and is thus invalid as "in conflict with Article 23 of the Maryland Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the Federal Constitution."

In opposition to the petition, we contend—

(1) the first holding of the court below involves nothing more than a construction of its own statutes and raises no federal question whatsoever; this Court is, therefore, without jurisdiction to review that holding;

(2) the second holding, although raising a federal question, is also based on an adequate state ground and thus not subject to review by this Court; and, in any event, the federal question was correctly decided.

NO GROUNDS EXIST FOR GRANTING WRIT

I.

Maryland's Construction of its Own Tax Statute is Conclusive.

To the extent that the petition requests this Court to grant the writ so as to re-examine Maryland's construction of its own statute as it stood prior to Chapter 3 of the Acts of 1957, it is totally without merit. All the court below did was to follow its previous decisions which clearly held transactions such as the present to be not subject to the sales tax. Whether the General Assembly of Maryland intended by that act to tax the transactions here involved is a question of state law on which this Court accepts the rulings of the highest court of the state. *Murdock v. Memphis,* 20 Wall. 590, 636; *Sauer v. New York,* 206 U. S. 536, 546; *Smith v. O'Grady,* 312 U. S. 329; *Williams v. Kaiser,* 323 U. S. 471; *Herb v. Pitcairn,* 324 U. S. 117, 125.

Cases such as *United States v. City of Detroit,* 355 U. S. 466; *United States v. Township of Muskegon,* 355 U. S. 484, and *City of Detroit v. Murray Corp.,* 355 U. S. 489, all decided on March 3, 1958, are wholly beside the point. In those cases the taxpayer claimed immunity under the federal constitution from a tax which the state legislature had undertaken to lay upon interests in real and personal property. Thus the only question before this Court was whether the federal constitution prohibited the state from taxing these interests. In the present case the highest court of Maryland has held that prior to January 28, 1957 no legislative authority existed for taxing the transactions here involved. Plainly this construction of the Maryland statute presents no federal question and is binding on this Court.

II.

The Decision that Chapter 3 is Invalid is Based Upon an Adequate Non-Federal Ground.

Aside from its reaffirmance of its prior decisions dealing with the scope of the original Act, all that the Maryland court held was that Chapter 3 was "in conflict with Article 23 of the Maryland Declaration of Rights and the Due Process Clause of the Fourteenth Amendment of the Federal Constitution". It is true, as petitioner contends, that this language shows that the state court held a state statute invalid on the ground of repugnancy to the federal constitution. But it is equally true that the very language relied on to show the existence of jurisdiction in this Court establishes the lack of it.

No proposition is better settled than that a decision by a state court holding a state statute invalid because repugnant to like provisions in both federal and state constitutions rests upon an adequate non-federal ground and will not be reviewed by this Court. *Lynch v. State of New York, ex rel Pierson,* 293 U. S. 52; *New York v. Central Sav. Bank,* 306 U. S. 661; See also: *Ellis v. Dixon,* 349 U. S. 458; *Durley v. Mayo,* 351 U. S. 277.

Here the Court has explicitly stated that its decision rests on Article 23 of the Maryland Declaration of Rights. The case is therefore unlike *Minnesota v. National Tea Company,* 309 U. S. 551, where this Court was left in doubt as to whether the state court had placed its decision on *both* the state and federal constitution or whether, as the opinion indicated, it felt that it was *bound* to hold the statute unconstitutional by reason of the federal clause irrespective of its own constitution (see opinion of Minnesota court quoted and discussed at 309 U. S. 553-555). A reading of the opinion in this case clearly shows that the

Court carefully considered the matter under its own constitutional provision as well as the federal and held that the Act violated both.

The petitioner's contention that this Court should construe the Maryland Declaration of Rights is totally without merit. As was pointed out in Section I of this brief, the Court has no jurisdiction to review a state's interpretation of its own laws or constitution merely to rule on alleged errors in construction. This is not a case where a Court has engaged in questionable interpretations in an obvious attempt to deprive a litigant of the right to seek review of a denial of a federal right. Cf. *Davis v. Wechsler*, 263 U. S. 22. Nor is there here any question of conflict between state and federal constitutions or between a state constitution and an interstate compact as in *West Virginia v. Sims*, 341 U. S. 22, 33. Even under the petitioner's theory, the most that can be said is that Maryland has given a broader construction to its due process clause than that given the federal one by this Court. And even if that were true, Maryland is at perfect liberty to do just that. *Minnesota v. National Tea Co., supra.*

III.

The Federal Question Presented Was Correctly Decided.

Although the decision was based on an adequate state ground which would preclude review even if the federal question involved were incorrectly decided (*Fox Film Corp. v. Muller*, 296 U. S. 207), the federal question was in fact correctly decided. The Maryland court's condemnation of the tax retroactively imposed upon closed transactions during a full ten year period is amply supported by the decisions of this Court. *Nichols v. Coolidge*, 274 U. S. 531;

Blodgett v. Holden, 275 U. S. 142; *Untermyer v. Anderson*, 276 U. S. 440 and *Coolidge v. Long*, 282 U. S. 582. See also *People v. Graves*, 280 N. Y. 405, 21 N. E. 2d 371 (1939); *Lacidem Realty Corp. v. Graves*, 288 N. Y. 354, 43 N. E. 2d 440 (1942) and *Commonwealth v. Budd Co.*, 379 Pa. 195, 108 A. 2d 563 (1954). *Welch v. Henry*, 305 U. S. 134 dealt with income taxation and involved only a relatively brief period of retroactivity.

CONCLUSION

For the reasons stated, it is respectfully submitted that no useful purpose can be served by granting the writ of certiorari in this case.

Respectfully submitted,

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